

**This alert summaries the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime along with an expected amendment in IGST law:**

- Works contract and Valuation pertaining to construction of a commercial or industrial complex service: Simplex Infrastructures Ltd- SC
- Appeal filed in Supreme Court against Delhi HC Order in the historic verdict on Rule 6A(1) & (2) of Service Tax Rules, 1994: Indian Association of Tour Operators Vs. UOI- SC
- Failure to produce Eway Bill and Confiscation of goods: Shaurya Enerprises Vs State of UP- 2018 (17) GSTL 38 (All.)
- Construction of Residential Complex: CCE , ST & Cus., Bangalore-II Vs. Nithesh Estates Ltd- 2018 (17) GSTL 414 (Kar.)
- Reverse Charge and Double Taxation: Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I: 2018 (17) GSTL 434 (Tri.-Ahmd.)
- Transportation of goods in vessel to port in India is Inter State Supply: Chambal Fertilizers & Chemicals Ltd -2018 (17) GSTL 526 (AAR GST)
- Though Penalty imposed for violation of DIFA Scheme, License revocation is unecesaary: Service Bureau Vs. CC -2018-TIOL-2732-CESTAT-Del
- Reimbursable expenses and Freight Difference not liable to Service Tax: PI Shipping and Logistics Ltd Vs. CCE & ST- 2018-TIOL3112-CESTAT-MAD

### **Simplex Infrastructures Ltd- SC**

- The Supreme Court Bench allowed the interlocutory Applications filed by the Appellant against High Court order. The High Court upheld the validity of Section 65(105) (zzzh) of the Finance Act , 1994 and Section 65(zzq) inserted by the Finance Act, 2005 upholding levy of Service Tax on composite contract for construction of commercial , industrial and residential complex as the provision imposes Service Tax only on the service portion and not on materials used to provide such services.
- Delhi High Court held that this composite contract for services and supply of goods for construction of a commercial, residential or an industrial complex could be bifurcated into service portion and goods portion.
- Under Notification No. 19/2015- ST value of materials used for computing service tax payable in respect of a composite contract for construction of a complex, building and residential complex enjoyed 67% abatement.
- Clause (iii) of proviso to Notification No. 15/2004-ST amended by Notification No. 19/2005-ST does not override Sections 65(105)(zzq) &(zzzh) of Finance Act as taxable service was defined along with charging section and valuation under which tax was payable only on the service element.

### **Indian Association of Tour Operators Vs. UOI- SC**

- The Delhi High Court on the issue of Tour Operator service provided to foreign services held Rule 6A(1) & 6A(2) of Service Tax Rules, 1994 as ultra vires Section 94(2)(f) of Finance Act, 1994.
- This judgment came as a big relief to companies fighting litigations under the provisions of the above referred to Service Tax Rules and Export of Services Rules. However to the utter shock of the Appellants the Government has filed appeal before Supreme Court against the High Court order and the Supreme Court has accepted the appeals filed after condoning the delay on the side of the government.
- By virtue of Rule 6A of Service Tax Rules, 1994 Export of Service could not be brought under the ambit of Service Tax and treated place of provision of services as being outside India.
- The High Court also struck down Section 66C of the Finance Act, 1994 and held that government cannot frame rules for non taxable services.

**Shaurya Enterprises Vs State of UP- Dispute pertained to seizure order dated 25.03.2018 2018 (17) GSTL 38 (All.)**

- Appellants purchased and sold iron and steel items from Hi Tec Power & Steel Ltd Raipur who loaded items for delivery for delivery in Uttar Pradesh. The Transporter involved in transporting the goods had goods receipt, tax invoice and test certificate.
- The truck was seized at UP check post for producing improper documents and issued interception memo and later passed seizure order on the ground that E-Way Bill was not furnished.
- It is a fact that the government had waived production of physical copy of E-Way Bill till 31.03.2018 but still the Appellant after interception of lorry downloaded the bill and furnished within half hour of detention thus complying with the requirement of the authorities. It is also a notable fact that 18% IGST on this moment of goods was charged in the tax invoice.
- The department disputed the fact that E-Way Bill copy was not present on moment of goods and held the seizure to be valid.
- The Court on perusal of facts held that E-Way Bill generated within half hour of vehicle seizure was not considered by the authorities and till 31st March, 2018 physical copy of the bill need not be produced and hence the detention and show cause notice was squashed.

**CCE , ST & Cus., Bangalore-II Vs. Nithesh Estates Ltd-2018 (17) GSTL 414 (Kar.)**

- Appellants a company that undertook construction work subcontracted the work to another company and upon completion the residential complex was handed over to the customers. The question that arose for consideration was whether construction of a residential complex came under meaning of personal use and whether 2010 CBEC Circular covered Appellants case.
- The Tribunal held that Service Tax was not liable to be paid on residential complex constructed as it fell within exclusion clause of residential complex definition under Section 65(91a) of the Finance Act, 1994.
- Appellants built these complexes to ITC Ltd by engaging a subcontractor who paid ST and filed returns on time. If the complex constructed by engaging a sub contractor was for the personal use of the customer then Service Tax was not required to be paid.
- Department contends that this construction has not been done for personal use of the customer and if construction was done directly by ITC then tax liability did not arise for the Appellant.
- On a perusal of the contentions of both the parties the court held that Appellants sub contracted construction work to L&T Ltd and did not undertake construction activity completely. There is no dispute about the fact that Appellants paid Service Tax to the government on payments made to sub contractor. The CBEC 2010 circular is clear that if ultimate owner availed services of promoter for designing, planning and construction and the owner receives the property for personal use then the activity is not subject to Service Tax.
- Thus the Circular clearly favours Appellants case and the sub contractor has paid Service Tax hence ST demand cannot be saddled on the Appellant. Hence the dispute on merits and limitation was held in Appellants favour.

### **Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I: 2018 (17) GSTL 434 (Tri.-Ahmd.)**

- Appellants availed the services of manpower recruitment agency and as per Notification No. 30/2012 they were required to pay 75% of Service Tax and the supplier was required to pay 25% of Service Tax.
- In one case both the Appellants and Suppliers did not pay tax and on being pointed out by the department supplier alone paid at 100% of the value instead of 25% on the second invoice, however Appellant paid tax on the first invoice.
- The Appellants contended that since supplier paid whole of ST they weren't required to pay tax as the department recovered whole tax amount for nonpayment of Service Tax and that double taxation could not be demanded.
- The Tribunal held that though Appellant was required to pay 75% of Service Tax on man power recruitment agency service on being pointed out by the department paid 100% of Service Tax on the first invoice. On the other invoice, supplier paid Service Tax at 100% instead of 25% hence Appellant need not pay tax on the same which would amount to double taxation not permissible under law.

### **Chambal Fertilizers & Chemicals Ltd 2018 (17) GSTL 526 (AAR GST)**

- The question that needs to be answered by the Authority for Advance Ruling is whether Ocean Freight Charges subject to GST levy and also levy of tax on import of raw materials of fertilizers.
- Appellants engaged in trading business of goods , purchased them from outside India and imported into India for which applicable rate of IGST was 5%. Goods were imported either on CIF basis or FOB basis.
- On CIF imports the exporter outside India bears the cost of transportation from their country to Indian ports for which services of foreign shipping companies were availed to bring goods into India. However on FOB imports, the importers bears transportation cost up to the Indian ports.
- Appellants paid IGST on goods purchased from outside India and imported into India and also paid Customs Duties at the time of clearance of these goods.
- The Authority prima facie made a case for invoking Section 7 of IGST Act and treated this activity as transportation of goods in a vessel to a port in India. IGST at 5% was to be paid under Section 5 of IGST Act. On CIF basis Appellant pays IGST on component of ocean freight paid to foreign supplier.
- On hearing the contentions of Appellants in detail the Authority held that IGST is liable to be paid under RCM on transportation of goods by vessel. Also the Authority under Section 97 of CGST Act, 2017 was not empowered to decide on any valuation disputes that may arise.

### **PI Shipping and Logistics Ltd Vs. CCE & ST 2018-TIOL3112-CESTAT-MAD**

- Appellants provided support to international steamer agent and took registration under steamer agent services and paid Service Tax. The dispute came up for hearing before CESTAT.
- During the course of Audit the department noticed differences between total receipts and the amounts on which tax was paid. The department wanted to tax the difference amount under BAS.
- Appellants contended that they had received reimbursements to cover the expenses incurred by them for activities carried out on behalf of their customers such as obtaining services abroad, clearance from port, transportation to customer premises, CHA Charges, CFS Charges etc.
- The Appellants case on reimbursable expenses incurred for various miscellaneous services in India as well as abroad contracted by them on customer behalf was covered by the Supreme Court judgment in the case of Intercontinental Technocrats.
- The Tribunal also held that ocean freight is not liable to Service Tax as these are activities outside taxable territory and also held in Appellants favour discounts enjoyed in payment of freight charges.

### **Service Bureau Vs. CC 2018-TIOL-2732-CESTAT-Del**

- Appellants are a customs broker and filed bills of entry for clearance of goods imported under DFIA Scheme.
- Customs Authority filed a case of under invoicing of goods against the Appellants. Notices was issued which culminated into Adjudicating and Appellate Authority orders.
- Tribunal heard this dispute and remanded the matter for denovo adjudication by the Appellate Authority. During this proceedings the Customs Broker License was revoked and whole amount of security deposit paid was forfeited.
- The Tribunal though made a case for failure to obtain proper authorization from their importer, facilitated highly undervalued importation of goods intending to fraudulently avail DFIA Benefits and even levied penalty. Hence revocation of courier license was held to be unnecessary.



## ABOUT DAA

DAA Consulting is a management consulting entity founded in the year 2010 by D Arvind who earlier worked in Big Four Firms as partner and Tax & Legal head in a large MNC prior to Big Four.

DAA specialises in GST, Customs, Foreign Trade Policy, SVB, Corporate Governance & Corporate Financial Advisory services including FEMA.

We operate out of Mumbai, Chennai, Bangalore, Coimbatore, Hyderabad, Nasik, Delhi and Pune.

To provide one stop solution, we have JVs / Collaboration with:

- ▶ **Vispi T Patel Associates**, a leading firm in Direct Tax, International Taxation & Transfer Pricing operating out of Mumbai to offer both Direct & Indirect Tax solutions under one roof. Vispi T Patel earlier worked as a Partner in big four.
- ▶ **Fynamics Techno Solutions Pvt. Ltd.**, a pioneer in providing technology solutions, for providing comprehensive technology solutions for addressing the ASP as well as E-Way Bill Requirements of the clients. Spearhead is the exclusive technology partner of DAA who will provide customized ASP/EWB Solutions based on the clients' requirement.
- ▶ **DAA RiverForest Services Pvt. Ltd.** is our JV which is a global management consulting arm through which we handle inbound and outbound investments in to / from India. With a presence in the US and Canada, DAA RiverForest can support in the area of Global Market Entry, Financial Advisory, HR Solutions, Governance and promoter Organization.
- ▶ **Anoma Legal**, is a specialized Legal Consultancy firm that supports us on legal advisory & Due Diligence services to various niche sectors like Financial Services, Infra Structure, Shipping & Logistics, Real Estate, Hospitality, Energy and Natural Resources etc.
- ▶ **U.S.Gandhi & Co**, is a multi-disciplinary professional services firm, which has been helping clients build their businesses for more than 3 decades. USG is our associate firm which specializes in Managing audits, providing forensic audit services and dealing with complex tax matters of both domestic & multi-national operations is the core of our business.





To View our Testimonials, visit  
<http://daa-india.com/testimonials/>

#### DAA | CHENNAI

#13/L, 3rd Floor, Bhagawathi Palace, J Block,  
3rd Avenue, Anna Nagar (East),  
Chennai 600 102

#### DAA | BANGALORE

#46/3, Lakshmi Nivas, 1st Floor, 6th Main Road,  
Opp. Adhyatma Prakasha Karyalaya, Tata Silk Farm,  
Bangalore 560 028

#### DAA | HYDERABAD

#311, H.No 1-7-79/A & B, Legend Crystal,  
Above Indian Overseas Bank, Paradise,  
Secunderabad 500 003

#### DAA | NASIK

Flat No.1, Rajkamal Residency, Plot No.83,  
Opp. Burkule Lawns, Shravan Sector D, CIDCO  
Nasik, MH 422 009

#### DAA | MUMBAI

#306-308, Bonanza, Sahar Plaza,  
Next to Kohinoor Hotel, J.B. Nagar, Andheri (E),  
Mumbai 400 059

#### DAA | COIMBATORE

#466, CPC Corporate Hub, 3rd Floor,  
Thadagam Road, RS Puram,  
Coimbatore 641 001

#### DAA | PUNE

#91 Spring Board, Sky Loft, Creaticity,  
Opp. Golf Course, Off Airport Road, Shastrinagar,  
Yerwada, Pune, MH 411 006

#### DAA | DELHI

#16, Nehru Apartment, Outer Ring Road, Kalkaji,  
New Delhi, 110 019

+91 98407 95565 / +91 80561 02618



[www.daa-india.com](http://www.daa-india.com)